

DOCUMENT RESUME

02090 - [A1232224]

[Request for Second Reconsideration of Bid Award]. B-187671.
April 29, 1977. 4 pp.

Decision re: Government Contractors, Inc.; by Robert P. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and
Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Navy: Naval Facilities
Engineering Command, Alexandria, VA; Small Business
Administration.

Authority: A.S.P.R. 1-900. B-180573 (1974).

The Navy contended that the award to the low bidder would be unfair to those bidders who based their bids on the specified number of man-hours. The award was not disturbed since the low bidder must stay within his bid price or default. (SS)

02099

DECISION



VICKERS
P. L. I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187671

DATE: April 29, 1977

MATTER OF: Government Contractors, Inc. - Reconsideration

DIGEST:

1. Prior decision is reaffirmed upon request for reconsideration by agency because low bid is responsive on its face. Therefore, even if SBA issues COC despite bidder's intention to furnish less than required man-hour level, bidder did so at its own risk and will be subject to default termination as record clearly shows procuring agency does not intend to waive requirement.
2. Bid which is only 5 percent below next acceptable bid cannot be said to be unconscionably low and therefore not for acceptance.

The Naval Facilities Engineering Command has requested reconsideration of our decision in the matter of Government Contractors, Inc., B-187671, January 31, 1977, 77-1 CPD 80, which we affirmed on reconsideration (B-187671, March 3, 1977).

The pertinent facts of the January 31, 1977, decision were summarized as follows in our March 3 reconsideration:

"That decision concerned a bid submitted by Government Contractors, Inc. (GCI), in response to an invitation for janitorial services. Following bid opening, GCI alleged that an error had been made in its bid and submitted its worksheet to the contracting officer in an effort to obtain correction. After reviewing the worksheet, the contracting officer determined that GCI had not established the amount for which correction was requested and moreover, the worksheet indicated that GCI had based its bid on furnishing 141,700 manhours rather than the 162,000 manhours required by the invitation. Accordingly, the contracting officer determined that the GCI bid could be withdrawn, but not corrected.

"Upon our review of the above facts, we found that we have a problem in concluding that the contracting officer's decision denying correction was reasonable. However, we also noted the discrepancy in the manhours required by the IFB and the manhours on which GCI based its bid and stated that this raised doubts as to whether GCI was a responsible prospective contractor and recommended that the appropriate determination under section 1-900 of the Armed Services Procurement Regulation (1976 ed.) be made."

In the reconsideration, we affirmed the finding that the discrepancy between the number of man-hours required by the solicitation for performance and those proposed by GCI involved a matter of responsibility not responsiveness.

The Navy has again requested our Office to reconsider our position on the acceptability of GCI's bid and permit the contracting officer to reject the bid without making a responsibility determination. The Navy argues that if the contracting officer determines GCI to be nonresponsible, such a finding would have to be submitted to the Small Business Administration (SBA) for consideration and possible issuance of a certificate of competency (COC) as to the capacity of GCI to perform the contract. The Navy argues that it has no doubt as to the ability or capacity of GCI to obtain sufficient manpower resources to meet the 169,000 man-hours and believes that SBA would issue the COC without reaching the critical issue that GCI proposes to provide only 141,700 man-hours in performance. Therefore, following the issuance of a COC, the Navy would have to award the contract to GCI, knowing that it did not intend to comply with the man-hour requirement.

Accordingly, the Navy states that it should be entitled to reject GCI's bid because an award under these circumstances would be unfair to other bidders who based their bids on the required number of man-hours and, also, awarding the contract to GCI with knowledge of the number of hours upon which the bid was based could constitute a waiver of the requirement. Further, the Navy argues that the bid of GCI, even as corrected, would be unconscionably low and therefore not for acceptance.

The five lowest bids received under the invitation for bids (IFB) were:

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GCI	\$612,000
National Storage Systems, Inc.	721,000
Best-Way, Inc.	729,890
Kentucky Building Maintenance, Inc.	743,000
E. C. Professional Services	751,680

If corrected, GCI's bid would be \$712,000. The second, third and fourth low bidders have either withdrawn their bids due to mistakes or their bids have expired. The fifth bidder, E. C. Professional Services, still has a viable bid and the Navy has advised our Office that it considers this bid acceptable. We do not believe the acceptance of a bid which is only 5 percent less than a bid which the procuring agency considers reasonable can be considered unconscionable. In past cases where we have found a bid to be unconscionably low, the bid has always been more than 50 percent below the next acceptable bid. See Yankee Engineering Company, Inc., B-180573, June 19, 1974, 74-1 CPD 333.

Concerning the argument that award to GCI may be unfair to other bidders who based their bids on supplying the required man-hours, it must be noted that GCI took no exception to the requirement in its responsive bid. Thus, if GCI is awarded the contract it would be bound to fulfill the man-hour requirement and the failure of GCI to comply would be a basis for a default termination. If GCI did underbid the contract, it will have to perform at a loss or be defaulted and held liable for the excess procurement costs.

Regarding the point raised by the Navy that to award the contract to GCI may constitute a waiver of the man-hour requirement, GCI has been sent copies of our prior two decisions on the procurement and is aware of the Navy's continued concern regarding the man-hour requirement. Therefore, we believe the Navy has made clear its intent not to waive the requirement.

Accordingly, we find the Navy should make a responsibility determination regarding GCI and if the determination is negative, the matter should be forwarded to SBA for consideration of issuing a COC. SBA should be specifically advised by the contracting officer of the concern over compliance with the man-hour requirement. If SBA issues a COC and award is made to GCI, the contracting officer should meet with GCI, as required by paragraph 1B.1.1 of the IFB, to review the proposed method of operation prior to the commencement of performance. If, from this review, it appears GCI

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does not intend to comply with the man-hour requirement, the contract can be defaulted based on an anticipatory breach by GCI.

For the foregoing reasons, we reaffirm our prior decision.

Atk: 11u
Deputy Comptroller General
of the United States